IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.13 OF 2005
IN
EXECUTION APPLICATION NO.544 OF 2004

Satyaprakash Rai Shreenarayan Rai Applicant
versus
Arvind Kailashnath Rai and
others Respondents

Mr.S.K.Chaurasia with Mr.A.M.Saraogi for applicant.
Mr.Dhananjay Singh for respondent no.1.
Mrs.Vanita Kakkar with Ms.Punita Khanna for respondent no.2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 25th July 2006

PC :

1. Along with this Chamber Summons a paper book in Suit No.1483 of 2005 is produced at the request of learned advocate for the second respondent who is a plaintiff in this suit. She submits that second respondent has filed this suit against the claimants as well as respondent no.1 and sought a declaration that the award in question does not bind her clients (second respondent) and that he has exclusive rights to the film in question.

2. It is fairly submitted by her that this suit was dismissed because the office objections have not been complied with. Office objections, inter alia, are for payment of court fees regarding the claim in the suit, for the purposes of court fee and jurisdiction. She makes a statement that the second respondent-plaintiff would take appropriate steps within a period of two weeks from today for removing these objections.

3. Needless to state that if the steps are not taken, then the order dismissing the suit shall stand and thereupon the second respondent will not be entitled to any rights in the film.

4. This Chamber Summons is by the claimants. The claimants have filed an execution application to enforce an award dated 14th June 2004 passed in Arbitration Proceedings between the claimants/petitioners and first respondent while it is true that the petitioner and first respondent are related to each other, the basis of the award is that the first respondent as a proprietor of M/s.A.P. Pictures had initially produced a T.V.Serial and thereafter was intending to produce a film on the basis of same title, details of which are mentioned in the

Chamber Summons and the award. The first respondent approached the decree holder and claimed for finance and it is the case of the claimants that he agreed to lend monies subject to a lien being created in his favour in respect of the film. The film was to be produced by taking benefits of the policy of providing subsidy of the Uttar Pradesh State Government. The financial assistance was rendered by the claimant-decree holder but the amounts were not refunded. Therefore, as agreed, the matter came to be referred to a sole arbitrator Mr.N.R.Pandey, who made his award on 14th June 2004. The award is in the following terms:-

> "1. The MOU dated 12/6/2003 signed between the Claimant and the Respondent is valid in substance and bound upon the Respondents and any further document signed by the Respondent with any third party subsequent to the said MOU to the exclusion of the Claimant cannot be made binding upon the claimant in any manner whatsoever.
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> 2. The Claimant as per the MOU is exclusive copyright holder and negative right holder in respect of the negatives and copyrights of the film titled "Sheikh chilli Chala Banaras" and as such, is very much entitled to take custody of the negatives of the said film and as also to release, exhibit and exploit the said film by appointing necessary distributors in the manner as contemplated in the said MOU.

> 3. The Claimant is also entitled to get all the amounts as may be due and payable or as may be receivable from any of the authority on account of subsidiary in respect of the said film in all respect.
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> 4. After the Claimant receive the sum of Rs.25 Lacs invested by him, any further amount so received, 50% shall be paid over by the Claimant or the Respondent within 30 days."

5. It is this award which is made under the Arbitration & Conciliation Act, 1996 that is sought to be enforced and executed as a decree of this Court.

6. This Chamber Summons is for appointment of Court Receiver in respect of negatives and sound negatives of the film.

7. I have noted in my order dated 3rd July 2006 that by a detailed order delivered on 28th February 2005 this Court gave an opportunity to the second respondent who had been impleaded as respondent no.2, to substantiate his pleas. That such opportunity be granted before the Receiver takes charge of negatives and sound negatives of the film in question and the issue of right, title and interest of the second respondent in this film be decided. Accordingly, a Commissioner was appointed to record evidence.

However, noticing that the Commissioner has not made any progress in the matter and even the second respondent did not take steps to file his affidavit in lieu of examination-in-chief, earlier order was recalled by me on 3rd July 2006. My order dated 3rd July 2006 records in paras 1 and 2 the contentions of second respondent and the observations of this Court in its order dated 28th February 2005.

8. All that I propose to do today is to continue the Court Receiver, who has already been appointed as Receiver by this Court on 28th February 2005, as Receiver of the film. However, as the first respondent has no dispute and seeks that the award be executed and enforced but the second respondent has filed a suit, it would be appropriate if the Court Receiver does not appoint anybody as his agent at this stage. If within a period of two weeks from today appropriate orders are not obtained by the respondent-plaintiff in the suit referred to above, then the Court Receiver shall proceed to take charge of the negatives and assign the negatives of the film referred in prayer clause (a) of this Chamber Summons and hand over physical custody thereof to the Judgement

Creditor, petitioner before me. Thereupon, the Court Receiver shall stand discharged after due payment of his costs, charges and expenses but without passing of any accounts.

9. I am not at this stage going into the rival contentions with regard to the right, title and interest of second respondent despite the order passed by this Court appointing Court Commissioner being recalled by me because of pendency of the suit. It is agreed by both sides that all observations made by this Court in the present order would not preclude them from making appropriate submissions at the hearing of any interlocutory application as well as of the pending suit. This would sufficiently protect the second respondent who has failed to appear before the Commissioner as he is hospitalised on account of some illness. As far as this Chamber Summons is concerned, it is in an execution application and for execution and enforcement of an award and that being not challenged by the first respondent, the decree holder is entitled to the reliefs in terms of this Chamber Summons.

10. Chamber Summons is made absolute as above. No order as to costs.

11. As far as Chamber Summons No.107 of 2006 is concerned it has been appearing on board for the past several weeks and also after the Chamber Summons No.13 of 2005 was posted for orders. The name of advocate for the applicant had been duly shown on the board but none appears in support of this Chamber Summons. It stands disposed of with identical liberty to the applicant therein inasmuch as the applicant would be at liberty to take out appropriate proceedings to assert his claim as a distributor in respect of subject film. Needless to state that the order disposing off this Chamber Summons shall not constitute a bar for institution of such proceedings and all contentions of the applicant in that behalf are expressly kept open.

12. Learned advocate for second respondent states that upon restoration of suit, if the second respondent desires to make any interim application, 72 hours prior notice will be given to the advocates for the decree holder-claimant as also the first respondent.

(S.C.DHARMADHIKARI, J.)